

REMARKS

The Office action mailed May 5, 2006, rejects claims 1-24. The applicant respectfully requests reconsideration of the claims in light of the amendments and remarks presented in this reply.

I. Statement concerning common ownership

The present application and U.S. Patent No. 6,137,100 ("Fossum") were, at the time the invention of the present application was made, owned by Photobit Corporation or subject to an obligation of assignment to Photobit Corporation. Both the '100 patent and the present application have since been assigned to Micron Technology, Inc.

II. Response to § 103(a) rejections (claims 1-12 and 16-24)

Claims 1, 4-7, 10-12, and 19-23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fossum in view of U.S. Patent No. 5,119,181 ("Perregaux"). Additionally, claims 2 and 3 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fossum and Perregaux and further in view of U.S. Patent No. 6,040,592 ("McDaniel"). Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fossum and Perregaux and further in view of U.S. Patent No. 6,040,592 ("the '483 patent"). Claim 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fossum in view of McDaniel. Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fossum in view of the '483 patent. Claim 24 is rejected under 35 U.S.C. § 103(a) as unpatentable over Fossum in view of Perregaux and further in view of McDaniel.

These rejections are respectfully traversed because under 35 U.S.C. § 103(c) Fossum does not preclude patentability of these claims. Section 103(c) applies to subject matter qualifying as prior art only under subsections (e), (f), or (g) of section 102 where the subject matter and the claimed invention were, at the time the claimed invention

was made, owned by the same person or subject to an obligation of assignment to the same person.

In the present case, Fossum was published after the filing date of the provisional application from which the present application claims priority. As such, Fossum is only available as a reference under 35 U.S.C. § 102(e). Moreover, as stated above, the present application and Fossum were, at the time the invention of the present application was made, owned by or subject to an obligation of assignment to the same entity, Photobit Corporation. As a result, Fossum does not render these claims unpatentable under section 103(a).

III. Response to § 102 rejections (claims 13-15)

Claims 13-15 stand rejected under 35 U.S.C. § 102(e) as anticipated by Fossum. These rejections are respectfully traversed.

Claim 13 recites, inter alia, "at least three color pixel elements of substantially equal pixel area" and "the photoreceptor of the second one of the color pixel elements having a second geometry different than the first geometry". No portions of Fossum teach this limitation. Figure 1A and its textual description disclose a prior art device where all pixels have equally sized collection areas. Figures 1B and 1C and their textual descriptions disclose pixels having pixels areas that are not substantially equal". Figure 4B discloses pixels with device geometries that are not different. No other portions of Fossum relate to the above-cited limitation.

As Fossum does not disclose all the limitations of claim 13, Fossum does not anticipate claim 13. Fossum does not anticipate claims 14 or 15 at least because each of these claims depends from an allowable base claim.

IV. Conclusion

In view of the above amendment, the applicant believes the pending application is in condition for allowance. If there are any formal matters remaining after this reply,

the applicant respectfully requests the examiner to telephone the undersigned. If there are any additional fees associated with the filing of this reply, including fees required under 35 C.F.R. §§ 1.16 or 1.17, please charge them to deposit account no. 04-1073.

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Respectfully submitted,

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